

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CAPITOL RECORDS INC.,
a Delaware corporation, et al.,

Plaintiffs,

v.

Civil File No. 06-CV-1497 (MJD/RLE)

JAMMIE THOMAS,

Defendant.

PLEASE TAKE NOTICE that upon the annexed Affidavit of Carl E. Christensen and the proposed brief *amicus curiae* annexed thereto, The Intellectual Property Institute of William Mitchell College of Law shall move this Court, before the Honorable Michael J. Davis, United States District Court Judge, at the United States Courthouse, District of Minnesota, Duluth, Minnesota at a date and time to be determined by the Court, for leave to file the proposed brief *amicus curiae*.

Dated: June 19, 2008, Minneapolis, Minnesota.

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UNITED STATES DISTRICT COURT
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Defendant.

I, Carl E. Christensen, hereby declare:

I am an Adjunct Professor of Law at William Mitchell College of Law and faculty of the William Mitchell Intellectual Property Institute.

I submit this Declaration to provide the Court with a copy of the brief I propose to file as amicus curiae Intellectual Property Institute of William Mitchell College of Law on behalf of Defendant Jammie Thomas, attached hereto as Exhibit A.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 19, 2008.

By s/Carl E. Christensen
Carl E. Christensen

Subscribed and sworn to before me this

19 day of June, 2008.

Notary Public

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Intellectual Property Institute of William Mitchell College of Law by and through undersigned attorney and pursuant to this Court's Order dated May 20, 2008, hereby moves this court for leave to file the accompanying brief as *amicus curiae* in support of Defendant Jammie Thomas in urging a new trial pursuant to the Court's Order that contemplates of a *sua sponte* motion for a new trial under to Fed. R. Civ. Pro. 59(d) because of jury instructions that disregarded controlling law and, therefore, constituted manifest error. In support of this motion, *amici curiae* state as follows:

1. The Intellectual Property Institute is an entity within William Mitchell College of Law. An important part of the Institute's mission is to engage in the rigorous exploration of the balance between privately owned and publicly shared works of authorship. The Institute views copyright law as one tool that establishes and maintains that balance of interests. Among the Institute's activities is the advocacy for the responsible development of intellectual property law, including copyright law. One of the Institute's purposes is to raise issues and arguments in light of the public interest and the best interests of the copyright system as a whole.

2. *Amici curiae* are concerned that the District Court committed a manifest error of law in instructing the jury, in Jury Instruction No. 15, that "[t]he act of making copyrighted sound recordings available for electronic distribution on a peer-to-peer

network, without license from the copyright owners, violates the copyright owners' exclusive right of distribution, regardless of whether actual distribution has been shown.”

3. *Amici curiae* have reason to believe that their brief will augment rather than reiterate the arguments made by Defendant.

4. Pursuant to this Court's Order dated May 15, 2008, the Institute requests leave of this Court to file its *Amicus Curiae* brief.

WHEREFORE, the Intellectual Property Institute of William Mitchell College of Law requests that this Court give leave for the Institute to file the accompanying brief *amicus curiae* in support of Defendant Jammie Thomas in urging for a new trial.

Respectfully submitted,

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